

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MARVIN SELBY,)	
)	
Appellant,)	
)	C.A. No. 04C-01-248 WCC
v.)	
)	
OLD GUARD INSURANCE)	
COMPANY, d/b/a WESTFIELD)	
GROUP,)	
)	
Appellee.)	

Submitted: November 12, 2004
Decided: February 28, 2005

ORDER

Upon Plaintiff Marvin Selby's Motion for Summary Judgment. DENIED.

Stephen B. Potter, Esquire and Jennifer-Kate Aaronson, Esquire, Potter, Carmine, Leonard & Aaronson, P.A., 840 North Union Street, P.O. Box 514, Wilmington, Delaware. Attorney for Plaintiff.

Robert C. McDonald, Esquire, Silverman, McDonald & Friedman, 1010 North Bancroft Parkway, Suite 22, Wilmington, Delaware. Attorney for Defendant.

CARPENTER, J.

This 28th day of February, 2005, after consideration of Appellant's Motion for Summary Judgment, it appears that:

1. On May 13, 2002, Marvin Selby ("Selby") was involved in a motor vehicle accident while employed by A-1 Sanitation ("A-1"). A-1 was insured by Old Guard Insurance Group, d.b.a. Westfield Group ("Westfield"). On July 10, 2003, Selby filed a petition with the Industrial Accident Board (the "Board") to determine the compensation to which he was entitled. The Board held a hearing and issued its opinion on December 5, 2003, granting Selby's petition for compensation. A-1 did not appeal the decision.

Selby also filed a claim for personal injury protection ("PIP") benefits against Westfield, with the Insurance Department of the State of Delaware (the "Arbitration Panel"). The Arbitration Panel found in favor of Westfield on January 6, 2004 and in response, Selby filed a timely Complaint on Appeal in this Court. Subsequently, the Court granted Selby's Motion to Bypass Arbitration, without objection by the Defendant.

2. Selby asserts that he is entitled to summary judgment on the causation issue based on the doctrine of collateral estoppel. Summary judgment is appropriate when the moving party has shown there are no genuine issues of material fact and as a

result, it is entitled to judgment as a matter of law.¹ In considering such a motion, the court must evaluate the facts in the light most favorable to the non-moving party.² Summary judgment will not be granted when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.³

3. At the moment, the Court finds that the record has not been sufficiently developed to grant a summary judgment motion. First, it is unclear from the limited pleadings submitted to the Court the role Westfield, as the worker's compensation insurer, actually played in that litigation. As an example, did the insurer hire the employer's counsel and retain the medical expert and to what degree were they involved in the decision not to appeal the Board's decision? These are all critical factual areas that need to be clarified to establish that Westfield was really the party in interest and should be bound by the Board's decision.

Secondly, the Court has no information as to what was presented to the Arbitration Panel in order for it to make its decision and it is unclear what exactly was

¹*Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *Schueler v. Martin*, 674 A.2d 882, 885 (Del. Super. Ct. 1996).

²*Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

³*Ebersole v. Lowengrub*, 180 A.2d 467, 468-469 (Del. 1962).

the nature of the compensation being sought at that hearing and for what time period. In essence, the Court has been provided with two decisions from different administrative boards without a clear record of the commonality between the issues that were presented them.

4. Finally, this is simply a case of jumping too soon for summary judgment. The parties need to do some discovery and create clear factual records to support their positions. The legal requirements of collateral estoppel have been well defined. It is the parties', not the Court's obligation to create the factual record to support or to argue against it.

5. Since it appears that with some work this litigation may be resolved by the summary judgment process, this present motion is denied without prejudice.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.